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**OFFICE OF PETITIONS**

Workman Nydegger  
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Salt Lake City UT 84111

In re Application of :  
Huang :  
Application No. 10/605,950 : **DECISION ON PETITION**  
Filed: November 9, 2003 :  
Attorney Docket No. 17657.26a :

This is a decision on the petition, filed March 27, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This above-identified application became abandoned for failure to file a response to a Notice of Non-Complaint Amendment, which was mailed on June 9, 2008. The Notice of Non-Complaint Amendment set an extendable one (1) month period for reply. No timely request for extension of time was obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application was held abandoned on July 10, 2008.

Petitioner asserts that the Notice of Non-Complaint Amendment dated June 9, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner. The statement should also describe the system used for recording an Office action received at the correspondence address of record and establish that the docketing system was sufficiently reliable;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. a copy of the master docket for the firm docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement. If no master docket exists, the practitioner

should so state and provide other evidence such, as but not limited: to the application file jacket, incoming mail log; calendar; reminder system or individual docket record for the application in question

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to art unit 2166 for review of the reply to the Notice of Non-Compliant Amendment submitted on petition in the normal course of business.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.



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Petitions Attorney  
Office of Petitions